

REMARKS

Applicant recognizes with appreciation that Examiner has indicated that Claims 8-11, 15 – 18, 20 and 23 – 25 would be allowable if rewritten in independent form and include all the limitations of the base claim and any intervening claims.

In this Amendment, Applicant has cancelled Claims 3 and 5, without prejudice or disclaimer and amended Claims 1, 2, 4, 6 – 22 and 24. Claim 1 has been amended to overcome the rejections and further specify the embodiments of the present invention. The support for the amendment can be found throughout the specification. Claims 2, 4, 6 – 22 and 24 have been amended to delete reference numerals and correct clerical errors. The amendment is editorial in nature. It is respectfully submitted that no new matter has been introduced by the amended claims. All claims are now present for examination and favorable reconsideration is respectfully requested in view of the preceding amendments and the following comments.

REJECTIONS UNDER 35 U.S.C. § 102:

Claims 1 – 4, 6, 7, 12 – 14, 16, 17, 19, 21 and 22 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Oglesbee (US 5,235,368), hereinafter Oglesbee. Claims 1, 2, 4 and 21 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Fleming-Schaub (US 5,619,299), hereinafter Fleming-Schaub.

Applicant traverses the rejection and respectfully submits that the presently claimed invention is not anticipated by the cited reference. More specifically, Claim 3 has been cancelled without prejudice or disclaimer. The rejection to Claim 3 is moot. In addition, Claim 1 has been amended to include additional features that are not anticipated by Oglesbee or Fleming-Schaub. Claims 2 – 4, 6, 7, 12 – 14, 16, 17, 19, 21 and 22 also include these features due to their dependency on Claim 1.

Oglesbee discloses a photographic apparatus for retaining a background sheet in a desired curvilinear configuration and the apparatus includes a support stand having an elevated mount to which an upper retainer is coupled. The upper retainer secures to a first end of the sheet and the coupling allows the upper retainer to be disposed in a vertical plane independent of the vertical plane of the elevated mount. Fleming-Schaub discloses a method to make a photographer's backdrop. It is respectfully submitted that neither Oglesbee nor Fleming-Schaub disclose or teach the embodiments of the present invention as currently amended, including the features that "the flexible basic body has such a stiffness that it can take different shapes, however, keeps an even surface when the shape is modified; and the adjustment device is indicated by openings obtained at least on one side of the flexible basic body by means of punchings, through which a string, a fiber or the like is guided alternately, respectively S-like, wherein at least one end of the string can be fixed by means of a fixing means." For example, Oglesbee fails to teach that the frame can be formed by flexible tubes that can be formed freely and keep the chosen form as the embodiments of Claim 17 of the present invention.

Therefore, the newly presented claims are not anticipated by Oglesbee and Fleming-Schaub, and the rejection under 35 U.S.C. § 102 (b) has been overcome. Accordingly, withdrawal of the rejection under 35 U.S.C. § 102 (b) is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103:

Claim 4 has been rejected under 35 U.S.C. §103 as allegedly being unpatentable over by Fleming-Schaub, in view of McNamara (US 5,993,334), hereinafter McNamara.

Applicant traverses the rejection and respectfully submits that the embodiments of present-claimed invention are not obvious over Fleming-Schaub in view of McNamara. At first, it is believed that a clerical error has been made when Examiner indicated that Claim 4 was rejected under 35 U.S.C. §103, but cited the features of Claim 5 in the detailed action. In addition, there is no indication of status of Claim 5 in the detailed

office action. Therefore, Applicant's response is directed to the rejection to Claim 5 under 35 U.S.C. §103. It is respectfully submitted that Claim 5 has been cancelled without prejudice or disclaimer. The rejection to Claim 5 is moot.

In addition, as stated above, Claim 1 has been amended to include the features that "the flexible basic body has such a stiffness that it can take different shapes, however, keeps an even surface when the shape is modified; and the adjustment device is indicated by openings obtained at least on one side of the flexible basic body by means of punchings, through which a string, a fiber or the like is guided alternately, respectively S-like, wherein at least one end of the string can be fixed by means of a fixing means." These embodiments of the amended claims are not obvious over Fleming-Schaub in view of McNamara. Fleming-Schaub shows background for photographic pictures on which an object to be photographed cannot be deposited. The screen in Fleming-Schaub may only be placed behind, besides or in front of the object. This is very different from the embodiments of the present invention as claimed where an object is deposited and photographed. In addition, Fleming-Schaub fails to disclose or teach fixing device for the variable background.

It is respectfully submitted that McNamara is reference of nonanalogous art and there is no motivation, suggestion or reasonable expectation of success in the prior art to combine Fleming-Schaub with McNamara. McNamara discloses a practice backdrop for hockey and other sports. Applicant respectfully submits that McNamara is not in the field of Applicant's endeavor for variable background for photographic pictures. In addition, McNamara is not reasonably pertinent to the particular problem with which the inventor was concerned. A person of ordinary skill in the art will not deem the disclosures in McNamara relevant to the embodiments of the present invention at the time of its invention. Even if they are combined, they do not render the embodiments of the present invention obvious. For example, the backgrounds in both Fleming-Schaub and McNamara are either suspended from a ceiling of a room or a stand and they are made from flexible material that does not guarantee an even and smooth surface when the background is adjusted.

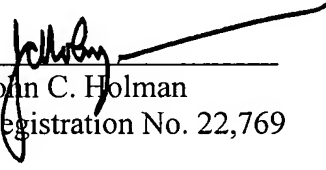
Therefore, the newly presented claims are not obvious Fleming-Schaub in view of McNamara and the rejection under 35 U.S.C. § 103 has been overcome. Accordingly, withdrawal of the rejections under 35 U.S.C. § 103 is respectfully requested.

Having overcome all outstanding grounds of rejection, the application is now in condition for allowance, and prompt action toward that end is respectfully solicited.

Respectfully submitted,

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